

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JURAJ IVIC,

Plaintiff,

**ORDER**

Civ. No. 19-cv-00509(DG)(JMW)

-against-

ADVANCE STORES COMPANY, INCORPORATED  
d/b/a ADVANCE AUTO PARTS, NORTH SUNRISE  
CORP., LANE-VALENTE INDUSTRIES, INC., SMS  
ASSIST, L.L.C., and ABC CORP. a fictitious name  
intending to be that of an unknown contractor,

Defendants.

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SMS ASSIST, L.L.C.,

Third-Party Plaintiff,

-against-

EURO CONTRACTING GROUP, INC.,

Third-Party Defendant.

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**WICKS**, Magistrate Judge:

Plaintiff commenced this action against Defendants, Advance Stores Company, Incorporated d/b/a Advance Auto Parts (“Advance”), North Sunrise Corp., Lane-Valente Industries, Inc. (“Lane-Valente”), SMS Assist, L.L.C. (“SMS”), and ABC Corp., for personal injuries he allegedly sustained as a result of Defendants’ negligence while he was performing construction work. (DE 20.) SMS filed its Answer with cross-claims on September 25, 2019.

(DE 32.) North Shore Sunrise Corp. filed its Answer with cross-claims on October 1, 2019. (DE 37.) On October 9, 2019, SMS filed a Third-Party Complaint against Euro Contracting Group Inc. (“Euro”). (DE 40). On October 18, 2019, Lane-Valente served its Answer with cross-claims. (DE 42.) On December 6, 2019, Lane-Valente served a separate cross-claim on Euro. (DE 48.) Euro answered the Third-Party Complaint on December 10, 2019 (DE 49), and answered Lane-Valente’s cross-claims on March, 6, 2020.<sup>1</sup> (DE 50.) On February 11, 2021, Advance filed its Answer to the Amended Complaint with cross-claims.<sup>2</sup> (DE 35.) On February 12, 2021, SMS answered Advance’s cross-claims.<sup>3</sup> (DE 70.)

Advance now seeks to amend its Answer to the Amended Complaint to include cross-claims against Euro. (DE 99.) Advance originally pled identical cross-claims for contractual indemnification and insurance coverage against “any and all codefendants named or as yet unnamed,” without specifying third-party defendant, Euro. Advance’s proposed amendments pertain to changing the identical previously pled cross-claims for contractual indemnification and insurance coverage to include third-party defendant Euro. *Id.*

Motions to amend pleadings are generally governed by Federal Rule of Civil Procedure 15(a). Pursuant to Fed. R. Civ. P. 15(a)(2), “The court shall freely give leave when justice so requires.” “Unless there is a showing of bad faith, undue delay, futility or undue prejudice to the non-moving parties, the district court should grant leave to amend.” *Adlife Mktg. & Commc’ns Co. v. Best Yet Mkt., Inc.*, No. 17-CV-02987 (ADS) (ARL) 2018 WL 4568801, at \*1 (E.D.N.Y.

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<sup>1</sup> Lane-Valente was dismissed from this action by joint stipulation of all parties on September 8, 2020. (DE 61)

<sup>2</sup> Advance filed its Answer to the Complaint with cross-claims on September 27, 2019. (DE 35). On February 8, 2021, Advance moved for leave to file an Answer to the Amended Complaint because it had inadvertently only filed an Answer to the Complaint. (DE 67-68). This Court granted the requested relief. (DE 2/11/2021).

<sup>3</sup> The cross-claims between Advance and SMS were dismissed on February 12, 2021. (DE 96).

Sept. 24, 2018) (citing *Forman v. Davis*, 371 U.S. 178, 182 (1962)); see also *Milanese v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001). The party opposing the proposed amended pleading has the burden of establishing that amendment would be prejudicial or futile. *Jipeng Du v. Wan Sang Chow*, No. 18-CV-01692 (ADS) (AKT) 2019 WL 3767536, at \*4 (E.D.N.Y. Aug. 9, 2019) (internal quotations and citations omitted). The moving party must attach the proposed amended complaint to the motion, specifying the new claims and/or parties intended to be added. *Nabatkhorian v. County of Nassau*, No. 12-CV-1118 (JS) (GRB) 2012 WL 13113646, at \*1 (E.D.N.Y. Aug. 9, 2012) (collecting cases).

Notably, Euro, nor any other party has opposed the proposed amended pleading. Advance properly attached the proposed Amended Answer to its motion, highlighting the exact modifications. The Court does not find the proposed modifications prejudicial despite Advance's delay in making this motion because other Defendants pled the same cross-claims against Euro. Based on the "relevant agreement terms" that Advance attached to its motion (DE 99, Ex. 2), the cross-claims should come as no surprise to Euro and the Court finds that the proposed modifications are not futile. Accordingly, Advance's unopposed Motion to Amend its Answer to the Amended Complaint is hereby granted. Advanced is directed to file the Amended Answer within 7 days of the date of this Order.<sup>4</sup>

Dated: Central Islip, New York  
August 4, 2021

**SO ORDERED:**

/s/ *James M. Wicks*

JAMES M. WICKS  
United States Magistrate Judge

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<sup>4</sup> The Court Notes that the 7-day timeframe to file the Amended Answer is Ordered in light of the District Judge's briefing schedule for the parties' anticipated summary judgment motions, whereby several dispositive motion deadlines are set for August 18, 2021. (DE 98).